

MINUTES

MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on January 30, 2001 at 9:00 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Duane Grimes, Vice Chairman (R)
Sen. Al Bishop (R)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Walter McNutt (R)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)

Members Excused: None.

Members Absent: None.

Staff Present: Valencia Lane, Legislative Branch
Cecile Tropila, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 158, 1/26/2001
Executive Action: SB 128 & SB 222

HEARING ON SB 158

Sponsor: SEN. LORENTS GROSFIELD, SD 13, BIG TIMBER

Proponents: Karla Gray, Chief Justice of Montana Supreme Court
Bill Leaphart, Justice, Montana Supreme Court
John Connor, Representing Attorney General's Office
Chad Wright, Appellate Defenders' Office

**Al Smith, Montana Trial Lawyers Assoc.
Beth Brenaman, Legal Director of ACLU of MT.**

Opponents: None

Opening Statement by Sponsor:

SEN. LORENTS GROSFIELD, SD 13, BIG TIMBER, handed out information on appellate courts **EXHIBIT(jus24a01)**. He said this bill would assist the court system with the amount of litigation that goes on in this state and would create an Intermediate Appellate Court (IAC). He stated this bill was introduced in the last session and is now presented with a unanimous recommendation from the Supreme Court. He pointed out the costs involved with the fiscal note and per bienniums this bill would cost under three million. He explained that the Intermediate Appellate Court would be made up of five judges who would be elected from districts and some cases would not go to the appellate court due to the definition of cases for example, cases dealing with constitutional questions or cases dealing with potential life sentences and death penalties.

Proponents' Testimony:

Karla Gray, Chief Justice of Montana Supreme Court, handed in her testimony **EXHIBIT(jus24a02)**.

Bill Leaphart, Justice on Montana Supreme Court, handed in his testimony **EXHIBIT(jus24a03)**.

John Connor, Representing Attorney General's Office, said the concern deals with the Supreme Court not having the time to deal with litigation cases and needs assistance. He explained the increased number of cases that the court has been dealing with and these cases will not receive the needed attention they deserve therefore assistance is asked through offering an IAC.

{Tape 1; Side B}

Chad Wright, Appellate Defenders Office, mentioned the delays that clients have gone through waiting for sentencing and it adds stress with the workload. He said this bill offers the structure that is needed in assisting the court and would make the newer court efficient.

Al Smith, Montana Trial Lawyers Assoc., said this bill is offered for the people of this state. He emphasized the need for an IAC and how the workload of the court system has added up over the years.

Beth Brenaman, Legal Director of ACLU of MT., urged support of this bill to insure the basic right of Montanans to have access to the court system.

Opponents' Testimony: None

Questions from Committee Members and Responses:

SEN. JERRY O'NEIL asked if there is a chance that the present court could be divided into panels of three. **Karla Gray** answered that she understands the appeal of the question, but by doing a division of branches there would not be decisions made by the majority of the supreme court and they are to make every decision.

SEN. O'NEIL asked what is the difference if the IAC takes over making decisions. **Karla Gray** answered that the IAC would not have the same rules and would be dealing with litigation cases only.

SEN. STEVE DOHERTY said this bill was long overdue for Montana and asked if this bill was in the governor's budget. **SEN. GROSFIELD** answered no.

SEN. DOHERTY asked what the governor's position was on this bill. **SEN. GROSFIELD** answered that he had not visited with the governor about this particular bill.

SEN. DOHERTY asked if this bill would be referred to the Senate Finance and Claims Committee. **SEN. GROSFIELD** answered that it has been the practice for a spending bill to go to that committee.

SEN. WALTER MCNUTT asked if there is an ability to limit the amount of cases that are heard. **Karla Gray** answered no, they do not.

SEN. MCNUTT asked why the caseload was increasing. **Karla Gray** answered that litigation is growing.

SEN. MCNUTT asked if there is such a caseload how could it go down for the supreme court as far as the attitude that is prevalent in the law profession. **Karla Gray** answered she couldn't confirm or deny what the law faculty may be doing. She added she understood how lawyers act as if they could handle the workload over handing it to the supreme court.

SEN. AL BISHOP asked why the existing supreme court could expand, amending the constitution, and split it into a couple of panels of five each and let the majority opinion in each of those panels be the decision of the court. **Karla Gray** answered it sounds like a good idea, but there is no room in our justice system for that type of expansion.

SEN. DUANE GRIMES asked how can they guarantee that the statistic for litigation cases can stay low. **Bill Leaphart** answered there are no guarantees, but we could look at the experience from the state of Nebraska using IAC. He said the workload should be divided up in terms of numbers and in terms of function so that the supreme court has ability to focus its resources and attention on more specific cases.

{Tape 2; Side A}

SEN. GRIMES asked if the court has invited the number of appeals and cases due to the reversal rate and how to address these concerns. **Bill Leaphart** answered by saying that statistics have grown and in terms of reversals the cases are increasing, more people are not appealing due to the reversal rate.

SEN. GRIMES asked if the same amount of money was taken and invested into the lower courts couldn't the same effect of relieving the pressure be taken off. He also asked what is the sensitivity of the lower courts workload. **Bill Leaphart** said they are aware of the needs of the lower court and many judicial districts could use extra people, but the problem needs to be addressed and the support has to be provided. **Karla Gray** stated districts are in need and the legislature has been accepting proposals and assisting these areas. She said they do not want to end up with a level of the court system whose needs are not being addressed.

SEN. MIKE HALLIGAN asked what is the respect of case law to family law and he also asked if there were any guideposts available. **Karla Gray** answered the bill provides most of the IAC decisions and they would not be published unless an opinion would be cited. She said within family law cases the relation is to whether there is substantial evidence on the record to support a finding that the court made or whether the district court abused its discretion in the overall distribution in the marital estate.

Closing by Sponsor:

SEN. LORENTS GROSFIELD, SD 13, BIG TIMBER, mentioned the judges would be elected from districts and there would not be statewide campaigns. He added this has become a serious problem and there

is no universal support for this because it becomes an issue of debate stemming from district courts to the supreme court or from the lack of clarity in laws that are passed in the legislature. He pointed out the filings and how they have increased over the years, a backlog of 633 to 868 within a year, and if that is happening every year with the same size court then this situation will get worse. He added the bill addresses a serious problem and consideration from legislators is needed to help with the concerns of the workload and concerns that every case would be appealed by the supreme court.

DISCUSSION ON SB 176:

CHAIRMAN GROSFIELD mentioned this bill needs to have a subcommittee to do more work. He felt this bill is a significant issue and it needs to come forward, but with the issues heard in the hearing a subcommittee would be needed.

SEN. MCNUTT supported the thought of a subcommittee and explained fundamentally what was discussed thus far has merit and he would recommend a subcommittee for this bill.

CHAIRMAN GROSFIELD mentioned possibly having three meetings to finalize discussions of this bill and present to the committee the recommendations within a week. He appointed **SEN. MCNUTT** to chair the committee, **SEN. GRIMES** and **SEN. HALLIGAN** to be on the committee.

EXECUTIVE ACTION ON SB 128

Motion: **SEN. O'NEIL** moved that **SB 128 BE AMENDED.**

Discussion:

SEN. O'NEIL said new language was added to this amendment adjusting it so that people involved were working for a fee.

{Tape 2; Side B}

SEN. GRIMES pointed out this amendment has existing language and he did not think this example would apply to this amendment.

SEN. O'NEIL agreed the amendment has existing language with the law as a misdemeanor, but not as a felony. He said that the general intent of the bill was to make it into a felony.

SEN. GRIMES asked what the legal intent is for the language of solicit or procures and how loosely or broadly these words could be interpreted. **Valencia Lane, Legislative Staffer** pointed out

the word "solicit" is defined as to encourage someone to commit a crime and she added since patronizing a prostitute is not a crime then it doesn't fit into the situation of one person urging another person to visit a prostitute. The amendments that were prepared for **SEN. O'NEIL** helped clarify the existing law to make more clear.

Vote: Motion carried 5-3 with **SEN. GRIMES**, **SEN. PEASE** and **SEN. HALLIGAN** voting no.

Discussion:

Valencia Lane said there was discussion referring to page 12, line 12, regarding if the age of 16 years should be changed to 18 years and she added that when the bill was drafted the 16 years of age was picked up from the statutory rape and consent statute. She explained this includes a person who is three years older than the average age, which was an attempt to exempt teenagers in consent.

Motion: Substitute Motion: **SEN. HALLIGAN** moved to **AMEND SB 128 PAGE 12, LINE 12 to change the age from 16 TO 18.**

EXHIBIT(jus24a04)SB012803.avl.

Discussion:

SEN. O'NEIL mentioned during the age of 16 some girls will act independently and it is hard to determine the will of their own and the will of someone else.

Vote: Motion **SB 128 changing 16 years of age to 18 years of age** carried 7-2 with **SEN. HOLDEN** and **SEN. O'NEIL** voting no.

Discussion:

SEN. GRIMES researched the possibility of adding some type of penalty to the bill. **Valencia Lane** said changing criminal penalties may not fit within the title of bill. The final decision would have to be from the Rules Committee or from **Greg Petesch, Legislative Staffer**, for certain types of crimes. She mentioned another option would be a committee bill.

CHAIRMAN GROSFIELD asked if civil was considered in addition to criminal. **SEN. GRIMES** answered yes and mentioned if someone was picked up and incarcerated for this then the girls that were harmed could get some civil remedy and put their life back together.

SEN. HALLIGAN said the young women involved would have a civil action due to assault, confinement or emotional distress. He added that the trouble with filing a separate lawsuit would not go to court for a certain period of time. **SEN. GRIMES** said he would like to propose a committee bill on a separate action in regard to this situation.

Motion: **SEN. GRIMES** moved **SB 128 BE ADOPTED.**

Discussion:

SEN. HALLIGAN said the intent of this bill shouldn't limit it to a patron of a house of prostitution.

SEN. O'NEIL suggested Section D and E of this amendment could be misdemeanors. **Valencia Lane** said the original intent was to amend Section D and E and **Greg Petesch, Legislative Staffer**, pointed out Section D makes it subject to a criminal penalty. She added that they clarified Section E so it would not be misconstrued.

SEN. HALLIGAN said when limiting language is added to the bill it weakens the bill. **Valencia Lane** said perhaps the language could say "fee" or "other remuneration".

SEN. HALLIGAN added there seemed to be some unintended consequences of this amendment. **SEN. O'NEIL** said the intent of the overall bill was to add penalties for pimps.

CHAIRMAN GROSFIELD said the question arises of unintended consequences and if this language would lead to other consequences.

SEN. HALLIGAN pointed out there are other places of prostitution listed in the yellow pages. He said this amendment was not procuring a prostitute and the creative levels of activity should not have misdemeanors where there ought to be felonies.

SEN. GRIMES felt the committee should look at others who solicit and although they may not charge a fee, hopefully no scenarios would be excluded from becoming a misdemeanor.

Motion/Vote: **SEN. HOLDEN** moved to reconsider and strip **SB 128** Amendments SB012802.av1. **Motion carried unanimously to BE ADOPTED.**

SEN. O'NEIL felt the bill adds language to sound like a felony. **SEN. HOLDEN** felt the language is not changing it to a felony and this is current statute. **SEN. GRIMES** mentioned this situation

depends upon the language of solicit and procure. **SEN. HALLIGAN** said remuneration could be added, putting in a fee issue would assist the situation of the bill with new language.

Valencia Lane asked for the committee to look on page nine, lines 11 and 12 regarding the definition of solicit. She explained that this language does not interpret the meaning to be a felony and consists of existing language within the bill.

{Tape 3; Side A}

Vote: Motion SB 128 DO PASS AS AMENDED carried unanimously.

Discussion Regarding a Possible Committee Bill:

SEN. GRIMES mentioned the FBI said there were 80 girls found from the state of Montana in this circuit. He said a task force was looked into and since this situation is very significant a committee task force should be formed.

CHAIRMAN GROSFIELD asked if the committee was to ask for a resolution? **SEN. GRIMES** said it would be to request a bill to be drafted in the formation of a task force.

CHAIRMAN GROSFIELD asked when this task force would present their information? **SEN. GRIMES** said it would be at a hearing, which would include the FBI, Billings Police Department and Attorney General's office. He said that the information that was constructed would be authorizing legislation for this interagency coordination.

SEN. HOLDEN opposed this proposal and added this bill should get through the process first to see how it works.

CHAIRMAN GROSFIELD asked if there was anyone searching into the validity of those numbers. **SEN. GRIMES** answered he had **SEN. BOHLINGER** reconfirmation on those numbers with the FBI and the purpose of this bill draft request would be to get the issue out.

CHAIRMAN GROSFIELD mentioned there were a couple of options for this and one would be to request information from the FBI verifying or request their presence for our committee to discuss the issue. **SEN. GRIMES** said he will look into the information further and present it to the committee.

Discussion Regarding Committee Procedures:

CHAIRMAN GROSFIELD discussed a procedural issue with secretarial minutes to the committee and asked for the chairmen to visit with their secretaries on how to handle motion/vote issues.

EXECUTIVE ACTION ON SB 222

Motion: SEN. O'NEIL moved SB 222 DO PASS.

Discussion:

SEN. GRIMES expressed the language implies to debate and litigate and he felt uncomfortable with the language in the bill.

SEN. O'NEIL responded this bill is offering the same rights in front of a jury trial as is current with a trial in front of a judge with no more rights.

SEN. HALLIGAN disagreed with the response and he added that this language talks about applicability, intent and merit of the offense charged and this law is going far beyond that. He asked if this bill is the intent of the legislature or intent of someone else to apply to a jury because it is not defined in this bill. **SEN. O'NEIL** answered this bill offers the same rights as a trial by the court and the defendant is enabled to argue the applicability intent and merit of the offense charged.

Vote: Motion failed 8-1 with SEN. O'NEIL voting no.

Motion/Vote: SEN. HALLIGAN moved that SB 222 BE TABLED. Motion carried with SEN. O'NEIL voting no.

ADJOURNMENT

Adjournment: 11:35 A.M.

SEN. LORENTS GROSFIELD, Chairman

CECILE TROPILA, Secretary

LG/CT

EXHIBIT (jus24aad)